

network providers,⁹⁴ great care must be taken not to overstate the "privacy" concerns associated with the accumulation, use, storage and distribution of such information. Such concerns, undoubtedly, depend greatly on the kind of information accumulated, the relationship associated with the accumulation and use of the information, the consumer benefits conferred as a result of the accumulation and use, and certain First Amendment principles that require a delicate balancing of the various interests in crafting any ultimate resolution.

B. Implementation Tools for Customer Choice, Control and Trust

U S WEST believes that an information policy dealing with transactional data that focuses solely on customer control of information use and distribution via an opt-in (the current CPNI approach for over 20 lines) or opt-out (the current CPNI approach for telephone company customers with less than 20 lines) model is too inflexible and simplistic to reflect market conditions. There are a number of information practices that a business, including telecommunications companies, might devise that can incorporate customer choice and control and instill trust, yet still permit a business to make use of its business asset -- its transactional information.⁹⁵

⁹⁴For example, much public record information is "transactional" in nature, although the transactions may be periodic rather than ongoing (e.g., drivers license information, real estate records, court filings, etc.).

⁹⁵See Section III., A. above.

In addition to the establishment of a basic information policy, a business can utilize any or all of the following methods in realizing an appropriate "information agreement"⁹⁶ with its customers. The need for one or the other will vary with the circumstances and with the business.

- Customer Notification -- a business advises if and how information is released by it to third non-affiliated parties so that customers are fully informed of the extent and scope of disclosure (thus, facilitating either an opt-in or opt-out);⁹⁷
- Opt-In -- information is used or released only if a customer affirmatively states that it can be;⁹⁸
- Opt-Out -- information can be used or released unless a customer indicates to the contrary;
- Information Stewardship -- a business carefully determines the businesses that it will partner with in the release of information, working to assure that it is within the expectation of the existing customer relationship;

⁹⁶This phrase was coined by Dr. Alan F. Westin in his interpretive essay to the 1990 Equifax Report, Westin Commentary at XXIII-XXIV.

⁹⁷As is obvious from earlier discussion, U S WEST does not believe that disclosure is required with respect to the obvious (*i.e.*, that data is accumulation or used by a company internally) unless a business sees some market need or advantage to making such a disclosure. See *supra* notes 44-46 and accompanying text.

⁹⁸U S WEST understands that the "opt-in" model has been utilized with regard to certain existing legislative models (*e.g.*, the Cable Acts and the Video Act with regard to the transfer of transactional information to third parties), we do not believe that it is essential that such a model be used. See Section III., C., pages 37-46. We believe that, often, the market can be as well served by aggressive disclosure and the option to opt out. The choice as to which is the better model to use on any given occasion is best resolved by market considerations as they exist at any given point in time, rather than by an inflexible regulatory or legislative mandates.

- Aggregation -- a business provides information on groups of customers;⁹⁹
- Anonymity -- a business provides individual information, but with personal identifications removed;
- Information Broker or Clearinghouse -- business acts as intermediary between seller and buyer, facilitating desired transactions and maintaining anonymity when no transaction is desired; and
- Designing Technology and Market Opportunities for Customer Choice/Control -- business will, undoubtedly, respond to market initiatives and will create additional technological tools by which customers will be able to exert choice and control over information conveyed about them.

Each one of these information practices allows for certain customer choice and control. All of them together provide businesses with ample opportunity to provide their customers with choice and control tools calculated to maintain their trust.

One approach should not be mandated over another. The key to the successful implementation of any fair practices model within the context of consumer/commercial relationships is the multiple possibilities and market flexibility. In the area of consumer privacy protection, all parties desire a certain end state: consumers satisfied that they are being treated fairly by business, both those they do business with and those that do business about the consumers themselves. Given the fact that the

⁹⁹In the 1989 Focus Group, most business and residential customers had no objection to the telephone company marketing statistical data on calling patterns because personal information would not be revealed; but felt otherwise about individual calling information.

desired end result is a "state of being" or feeling, it is not wise to endorse any particular technology or road map for getting to that state. Even among those businesses categorized as "telecommunications companies," there is broad diversity. That diversity should be allowed to flourish in fashioning "fair use" information principles.

V. CONCLUSION

Information policies surrounding transactional information, of which CPNI is but one type, while perhaps different for different kinds of information and/or different businesses or industries, should have -- at the very least -- some foundational grounding in fact: facts about individuals and their perceptions and expectations, facts about the elements of the transactions, facts about the economy in which the transactions are conducted, facts about the larger Information Market. All too often, especially with regard to "privacy" dialogues, such facts are absent. Instead of facts, privacy advocates and competitors endorse general consumer anxiety about the accumulation of information, and computer storage and retrieval. Such advocates often ignore the dynamics of a relationship on information practices and customer expectations. All too often they argue for a "one size fits all" approach -- not just with respect to information "policy" (which might not be inappropriate) but to information "practice" implementation.

One size does not necessarily fit all. But neither do customers expectations necessarily vary, as between commercial entities, by type of product offering. A more refined analytical process is required than has generally been employed in the past.

Consumer privacy expectations should not be trivialized, but neither should they be overstated. In an Information Age economy, great inefficiencies can be introduced into the market by ascribing to consumers fears and anxieties that they do not have. Alternatively, allowing flexibility to be maximized within consumers' existing relationships with businesses can be expected to produce a more accurate market picture.

For example, it would seem fairly remarkable if consumer expectations about transactional information were different for telecommunications companies than for cable companies. Although historically the "markets" for these services, and the respective delivery channels, may have been different, the relationships were very similar: a franchised "monopoly" cable company serving individuals, free to use its internal transactional data for ordinary business purposes -- including new product design and development and marketing. No additional consumer "approval" for such use was perceived as necessary and none was required. The model endorsed by Congress in the Cable Acts, while not perfect, is a model more aligned with consumer privacy expectations with respect to telecommunications companies than the Commission's current CPNI Rules or any model currently pending before Congress regarding telecommunications common carriers.

U S WEST appreciates the Commission's concerns over consumer privacy, especially in a changing telecommunications environment. However, there is no credible evidence to support a finding the Commission's current CPNI rules need to be more restrictive with regard to BOC usage to comport with consumer expectations. If consumer expectations are to remain the touchstone of Commission policy in the CPNI area, BOCs and their affiliates will be permitted to continue to use such information to provide high quality service to the consumers they serve.

The Commission's CPNI Rules should not be changed to become more restrictive with regard to BOC access and usage. Those Rules are the result of the Commission's attempt to strike an appropriate balance with regard to access to information and consumer privacy. The balance struck is generally the correct one, as it allows customers to make appropriate choices: customers can restrict BOC employee access or make their information available to others. The choice is the customer's.

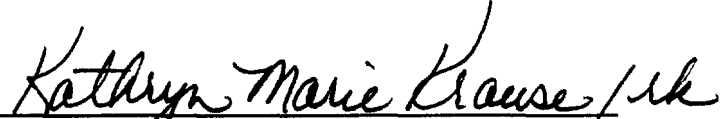
The Commission's CPNI Rules, can, however stand some modification. Those Rules should not become more onerous with regard to the BOCs' use of their own customer information, but less so. The Commission should repeal all prior authorization requirements and should permit the BOCs to fashion use, rather than access, restrictions with regard to their customer information, on a going-forward basis. Fundamentally, BOCs' information practices and procedures should be permitted to

mirror those practices of other American businesses operating in
an Information Age. Our customers expect no more and no less.

Respectfully submitted,

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April 11, 1994

APPENDIX A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Computer III Remand Proceedings:
Bell Operating Company Safeguards;
and Tier 1 Local Exchange Company
Safeguards

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)
) CC Docket No. 90-623
)
)
)

COMMENTS

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March 8, 1991

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those of residential consumers. An attempt to extend those rules to require "prior authorization" for the BOCs would only produce confusion.

In any event, access to CPNI is not the real issue that drives the repeated complaints from competitors; joint marketing is. The issue of CPNI has, frankly, become the fertile, but collateral, ground by which to undermine BOC joint marketing efforts. The Commission should stop this repeated regulatory revisit of the CPNI issue. As the Commission has done before, it should make clear that (1) integrated operations are in the public interest; (2) joint marketing is permissible in an integrated environment and is actually the primary vehicle resulting in some enhanced services reaching the mass market; and (3) the current CPNI rules promote integration and advantage both consumers and the industry as a whole.

IV. THE CURRENT CPNI RULES COMPORT WITH CUSTOMER EXPECTATIONS

The current CPNI rules were derived with an eye toward "balanc[ing] considerations of efficiency, competitive equity, and privacy."²¹⁹ Yet all interests are not equal in the balance. Efficiency and privacy probably carry more weight, at least to the consumers who make up the markets being served by the BOCs and other businesses, than does competitive parity. Indeed, to accord the proper respect to the expectations of consumers and to

²¹⁹NPRM at ¶ 40.

their notions of confidentiality, competitive parity vis-a-vis a BOC and a competitor probably cannot be achieved at the aspirational level the Commission may desire. If the Commission continues to find "equal access" concepts seductive, it will do so only by abandoning any pretexts of efficiency and only by confusing customers to such a degree that integrated operations will become the regulatory dinosaur of the marketplace.

A. Third Party Access to CPNI.

Given what the Commission has already done with CPNI, casting it almost as a shared or quasi-property right of the customer²²⁰ and continually acknowledging and addressing

²²⁰By using the word "proprietary" in the definition, rather than "confidential," an argument might be made that the Commission elevated the customer's right with regard to this data to some kind of ownership right, such that it cannot be given to others without consent. See, e.g., AT&T CPE Relief Order, 102 F.C.C.2d at 692-93 ¶ 64. The Commission, through the creation of regulatory acronyms, cannot alter fundamental ownership rights in information. To the extent that the BOCs are the recorders of the data, they have a proprietary interest in the data. The customers undoubtedly have certain interests in the data, such as those pertaining to confidentiality or to releasing the data to others. However, USWC does not agree that the customers "own" the data to the extent that this observation is meant to imply that others do not have similar proprietary claims to the information.

At least one author has stated that the phrase "customer proprietary network information" is "a kind of oxymoron[;] . . . 'proprietary' and 'network' are contradictory. 'Proprietary' refers to information that the customer owns. . . . The purpose . . . of a network is to exchange information. . . . Network records cannot be completely proprietary to anyone. At the same time, customers clearly have a legitimate privacy stake in somehow restricting the access of others to their records." McManus, Thomas E., Telephone Transaction-Generated Information: Rights and Restrictions, May 1990 (Program on Information Resources Policy, Harvard University, Center for Information

customers' expectations of confidentiality,²²¹ providing "equal access" to customer CPNI to third party vendors is virtually impossible. And, this is as it should be. Quite simply, customers do not expect that the information they share with the BOCs will be shared with others, except pursuant to their consent.

Historically, phone companies have held a somewhat elevated place in consumers' attitudes about data collectors. In a 1979 Louis Harris and Associates poll, telephone companies were judged to be institutions that did not ask for too much personal information and limited the demands for information to what was necessary.²²² In a 1983 poll conducted by that same organization, telephone companies were identified as an institution seen as most likely to maintain confidentiality with regard to customer information.²²³ In a 1988 Cambridge Report, sponsored by

Policy Research) at 63 ("McManus Report"). Copies of this report are being made available to the Commission and selected Staff. Interested parties can contact Harvard University for copies.

²²¹This acknowledgement has been done, generally, within the context of large businesses and has been based, in part, on representations of certain committees purporting to represent those users. See, e.g., BOC CPE Relief Order, 2 FCC Rcd. at 152 ¶ 60; Phase I Order, 104 F.C.C.2d at 1086-87 ¶ 256; Phase II Order, 2 FCC Rcd. at 3093 ¶ 142, 3095 ¶ 154, 3096 ¶ 164.

²²²See Privacy in America, A National Survey of Public and Leadership Attitudes, Conducted for Sentry Insurance, by Louis Harris and Associates, Inc., January 1979 at 49-50 (Study No. 784226). In this regard, only private doctors were considered better than telephone companies in restricting information gathering to that necessary.

²²³See The Road After 1984: The Impact of Technology on Society, by Louis Harris and Associates, 1983. The Internal Revenue Service and the Federal Bureau of Investigation were the

Bellcore, 94% of the respondents believed that telephone companies should be required to ask permission before providing names and addresses to another organization.²²⁴

Customers have a reason for believing that telephone companies are to be trusted with their information -- they have represented to their customers, either through conduct or other expression, that their information will be safeguarded. USWC, for example, has advised customers that their information is "fully protected."²²⁵ Such a statement would not support the general dissemination of information to other businesses -- even competing ones.

only institutions rated higher in this regard.

In 1990, Harris and Associates was commissioned by Equifax to do another study. See The Equifax Report on Consumers in the Information Age, a national opinion survey conducted for Equifax, Inc. by Louis Harris and Associates and Dr. Alan F. Westin, professor, Columbia University ("Equifax Report"). In this Report, hospitals and the Census Bureau were considered the most protective and responsible with regard to consumer data (81%), followed closely by employers, the Social Security Administration and telephone companies (76%). See Equifax Report, Chapter 2, pp. 19-21.

²²⁴Opinion Trends, March 30, 1988. Cambridge Reports, First Quarter 1988. This finding is consistent with those of other organizations. In "Remarks of Jonathan S. Linen, President, Direct Marketing Group, American Express Travel Related Services Company, Inc., at the Direct Marketing Association's 71st Annual Conference and Exhibition, October 17, 1988, Atlanta, Georgia" ("Linen Remarks"), Mr. Linen reported certain results of a public attitudinal survey conducted by American Express of both card members and non-members. One of the results reported was that "Eighty percent [of all Americans] do not think companies should give out personal information to other companies[.]" Linen Remarks at 2.

²²⁵This message was related through the information pages of the White Pages Directory. A similar message has been there for years.

There are those, perhaps, that will argue that BOCs' claims of "privacy" or "confidentiality" are just a ruse to continue the "unequal" CPNI access rules. That such claims will be made should not be surprising. For example, a recent study on certain customer information, "telephone transaction generated information,"²²⁶ indicates that there are a number of stakeholders who want access to BOC customer information.²²⁷ Those stakeholders often argue that privacy is a sword wielded by the BOCs in their attempts to restrict access to customer information.²²⁸

The BOCs' claims of "privacy," while a sword perhaps, are no ruse.²²⁹ One need only look at the Baer Petition²³⁰ before this Commission and the comments filed therein, as well as the state proceedings involving Caller ID to know that this is a genuine,

²²⁶McManus Report at 6, note 220, supra.

²²⁷Id. at 9-10, 14. These "stakeholders" include the BOCs, themselves, interexchange carriers, directory companies, direct marketers, electronic and print information providers, manufacturers and even other customers. Given the fact that the Commission here is dealing with a limited stakeholder body, the Commission should exercise extreme caution in requiring anything less than affirmative customer consent to convey customer information to non-BOC entities.

²²⁸See id. at 14.

²²⁹See id. and at 47-65.

²³⁰See Petition for Rulemaking to Establish Uniform Nationwide Rules for Calling Number Delivery, RM-7397 (1990) ("Baer Petition").

emotional issue.²³¹ That the Caller ID service, which after all in its most common provisioning mode transmits only a telephone number, could generate such volatile reactions on both sides, demonstrates that what sometimes passes as a debate over "privacy" is really a debate over the unconsented-to dissemination of individual information.

USWC does not believe that the Commission would really consider modifying its current rules to provide third party vendors with the same access as that currently afforded the BOCs. Thus, as suggested by the Commission's current proposal, the Commission's "bent" would be to modify the BOCs' practices.

B. BOCs' Access to CPNI as a General Matter.

For many complaining competitors in this and other proceedings, the CPNI matter is simple: CPNI is CPNI and access is access. Unless and until the Commission orders "equal access"

²³¹The Equifax Report discussed above had a specific question with regard to Caller ID, which was supplemented later with a second question. See Equifax Report, Chapter 8, pp. 78-82. See also Katz, James, "Sociological Perspectives on Caller-ID Privacy," Public Release, February, 1990.

While the "privacy" claims made within the context of the Caller ID debate are sometimes associated with non-published and non-listed subscribers whose phone numbers might be revealed, a type of "publication of private facts" privacy claim, what constitutes much of the current privacy debate in telecommunications is not easily aligned with traditional concepts of "privacy." Even those with published numbers often believe that the number should not be released outside the phone company without consent. Much of the current privacy debate is really a debate over control: control of customer, or as we say at USWC, "individual" information. Customers want that control when information is used outside of a contemporaneous transaction or an existing relationship.

with regard to CPNI, these competitors will not be satisfied.

From the standpoint of a competitor, it is certain that the information that BOCs have on their existing customers and their access to that information is valuable.²³² But that is not the salient or material question for this proceeding. In this, an admitted regulatory proceeding, the question is: Whether the BOCs should be deprived of this access, unless they receive prior customer authorization, as is required for non-BOC ESPs, even though a customer's expectations with regard to the use of the CPNI differs as between the BOC and non-BOC entity. Similarly, one could ask whether the BOCs should be obliged to spend millions of dollars informing customers about "enhanced services" and bearing the brunt of a perceived vacuum in term of the industry's consumer education efforts. While these are regulatory questions, to be sure, the answers to these questions are carried out in real customer markets. The answers must make sense, and add value, there.

²³²USWC does not herein discuss the theoretical "value" of customers' CPNI. It should be obvious that the customer information associated with any business enterprise has value. This is no less true of the BOCs' customer information. See, e.g., McManus Report at 8. However, value can take many aspects. With regard to the BOCs' use of CPNI, there might be an intrinsic value to the CPNI -- depending on how it is used by the various BOCs. But there clearly is, as to all BOCs, a value in greeting their customers as though they know them, i.e., a value in not exponentially increasing the number of password restricted customer accounts that must be dealt with. See discussion at 64-68, supra. It is clear that at least some of the value associated with CPNI comes from the fact that the majority of customers have not restricted it. Thus, USWC is able to talk intelligently to customers who call and not treat them as strangers to our relationship.

1. There is no need for prior authorization.

On more than one occasion, the BOCs have argued that a customer's expectation is that a company that they already do business with will have access to, and use, information about the customer -- whether in selling them a new service or, more simply, in responding to a customer when a call comes into the business enterprise.²³³ Indeed, the Commission itself has observed that it:

anticipate[s] that most of the BOCs' network service customers . . . would not object to having their CPNI made available to the BOCs to increase the competitive offerings made to such customers. Indeed, one of the greatest benefits of efficient carrier provision of enhanced and basic services without structural separation will be the availability of new services to residential and small business customers. Our CPNI rule permits carriers to make these users aware of the enhanced services that are available through the network.²³⁴

USWC agrees with these observations. There is a general customer expectation that, after doing business with an enterprise, that enterprise has information about the transaction and the customer.²³⁵ We have not received large numbers of

²³³This representation is buttressed by those made by others. See, e.g., the comments from the McManus Report at note 235, infra.

²³⁴Phase II Recon. Order, 3 FCC Rcd. at 1163 ¶ 98.

²³⁵As stated by McManus, "Generally, people and organizations have a right to make records of [those] transactions to which they are a party, and they have control over those records. In a sense, when two parties enter into a contract, each party owns the records he or she keeps in the ordinary course of business. They could agree, within limits, to keep the transaction confidential." McManus Report at 50.

requests to restrict CPNI from those customers who have received CPNI "notifications." Nor have we experienced any residential consumer surprise that we know certain characteristics about them that might make them interested in voice mail, for example.

Additionally, in this and other proceedings, the Commission has recognized that customers want one-stop shopping.²³⁶ If customers want one-stop shopping capabilities, and they do,²³⁷ is it reasonable to assume or expect that those customers would intentionally "withhold" consent from the BOCs to use their CPNI? No. It is not. Is it reasonable to assume those same customers might not return prior authorization cards. Indeed, for the residential consumer this is a very reasonable assumption. If, as the result of customer inertia or lack of understanding, the BOCs cannot respond knowledgeably to the customers with whom they already have a relationship with or come in contact with, then quality customer service is impossible. The advancement of enhanced services to the mass market will remain a notion and not a reality.

In determining the propriety or the necessity of

Mr. McManus continues: "The rights and restrictions which can affect transaction records generally have to do with privacy and access. To a great extent, the degree to which these rights can affect the records varies with the relationship of the parties[.]" *Id.* (emphasis added).

²³⁶See, e.g., AT&T CPE Relief NPRM, 102 F.C.C.2d at 639-40 ¶ 23; AT&T CPE Relief Order, 102 F.C.C.2d at 693 ¶ 64; BOC CPE Relief Order, 2 FCC Rcd. at 147-48 ¶ 29 and n.86; Phase I NPRM, 50 Rad. Reg. at 33592 n.58.

²³⁷See discussion below at 81, 83 and note 77, supra.

establishing a prior authorization requirement for the BOCs with regard to their access to and use of customers' CPNI, it is helpful to segment the customer market. One could ask: "What is gained for the customer segment by requiring such authorization?" "What is lost?" "What can reasonably be expected to happen, if the choice is offered?" "Do the behaviors correspond with what the customers might actually want?"

USWC demonstrates below that prior authorization is not necessary or appropriate. It is neither expected by customers nor would such a requirement be easily understood or implemented with regard to the marketplace, especially the residential market.

2. There is no need for further customer notification.

Customer notifications have been mandated by the Commission in the past, with regard to multi-line business customers.²³⁸ The scope of the notifications, their timing and even their contents have been compelled by Commission action or review.²³⁹

²³⁸See Phase II Order, 2 FCC Rcd. at 3096 ¶¶ 162-65; and see BOC CPE Relief Order, 2 FCC Rcd. at 153 ¶ 70; AT&T CPE Relief Recon. Order, 104 F.C.C.2d at 768 ¶ 53. At USWC, in fact, we provided such notice to both single and multi-line business customers, as the work and expense associated with segregating the customer records was more burdensome than simply giving the notification.

²³⁹The carriers were required to "adequately describe their CPNI obligations and the customer's CPNI rights as established above and set forth in the Phase I Order. These carriers [also were required to] describe the content of their notices in their CPNI plans to be submitted to th[e] Commission." Phase II Order, 2 FCC Rcd. at 3096 ¶ 165 (footnotes omitted).

customer "notification" to these market segments.

The Commission has acknowledged that giving customer notification is expensive.²⁴² The Commission should not require the BOCs to incur such an expense with regard to small business customers or residential consumers without a careful analysis of the costs involved and the benefits reasonably expected to be realized with regard to those market segments from such notification. Expectations with regard to how one market segment behaves, such as large business, are not necessarily, or even reasonably, valid as to how other market segments behave.

USWC submits that the subject of customer notification is still mired in basic uncertainty and ambiguity. Does the cost of the notification actually purchase anything? Does it actually impart any new information of value to those who see it? If it does result in imparting certain basic choices, does it result in a significant number of restrictions on BOC use or a considerable number of consents given to pass the information to other vendors? In light of the fact that this information is not even clear with regard to the customer segment that the Commission is most knowledgeable about, i.e., the large business customer, there is a total absence of any evidence that might demonstrate that customer notification should be expanded in scope.

More importantly, however, the BOCs should not be compelled to notify small business customers or residential consumers about

²⁴²See Phase I Order, 104 F.C.C.2d at 1089 ¶ 260; Phase II Order, 2 FCC Rcd. at 3096 ¶ 164.

CPNI as a panacea to allay the criticisms of those who object to BOC access to that CPNI. While it might appear an attractive regulatory compromise to maintain the existing access rules, rejecting any prior authorization requirement, but to impose certain customer notification requirements in lieu of access restrictions, an omnibus customer notification program should not be mandated.

3. Customer segmentation.

a. The large business customer.

The Commission has had a lot to say about this customer. These customers are "sophisticated,"²⁴³ knowledgeable both as to CPE sources and available enhanced services,²⁴⁴ the most interested in multiple sources of supply and the least likely to succumb to a sale (either of CPE or enhanced services) upon the first sales inquiry.²⁴⁵

The sophistication of these large business customers leads to a number of corollary principles:

²⁴³See, e.g., AT&T CPE Relief Order, 102 F.C.C.2d at 693 ¶ 65; see also BOC CPE Relief Order, 2 FCC Rcd. at 153 ¶ 68; and Phase I Order, 104 F.C.C.2d at 1089 ¶ 260.

²⁴⁴See, e.g., AT&T CPE Relief Recon. Order, 104 F.C.C.2d at 767 ¶ 51; Phase II Order, 2 FCC Rcd. at 3095 ¶ 153.

²⁴⁵See, e.g., AT&T CPE Relief Order, 102 F.C.C.2d at 693 ¶ 65; AT&T CPE Relief Recon. Order, 104 F.C.C.2d at 767 ¶ 51 and n.73; BOC CPE Relief Order, 2 FCC Rcd. at 153 ¶ 68; BOC CPE Relief Recon. Order, 3 FCC Rcd. at 25 ¶ 21, 29 n.35; Phase I Order, 104 F.C.C.2d at 1089 ¶ 260 and n.313; Phase II Order, 2 FCC Rcd. at 3094 ¶ 152.

- (1) These customers are likely to want at least the BOCs,²⁴⁶ if not other selected enhanced services providers, to have access to their CPNI so that they can have multiple sources for services. These customers, as a class, would be motivated, even if their were a prior authorization requirement for the BOCs, to grant that prior authorization because they would want the full panoply of competitive choices in making decisions about what products and services to purchase. Thus, requiring prior authorization from these customers would not actually result in a reduction of the BOCs use of their CPNI -- it would only add to the BOCs costs to get it.
- (2) For the most part, these customers know about enhanced services²⁴⁷ and of the CPNI requirements and would know about them even absent a BOC notification.²⁴⁸ Thus, it is arguable whether the notification expense already incurred, and continuing to be incurred, by the BOCs for this market segment is required as a practical matter.
- (3) To the extent that a minority of these customers do not want their CPNI used by the BOCs or other enhanced services providers, they will be internally motivated to restrict such use. This restriction is not really a "burden" on those customers when compared to the "burden" that would be visited on all large business customers, if a prior authorization requirement were

²⁴⁶The Ameritech evidence in the record with regard to the protocol conversion waiver and customer notification supports this conclusion. See Phase II Recon. Order, 3 FCC Rcd. at 1162 ¶ 95.

²⁴⁷In making this assertion, USWC does not mean to imply that customers necessarily know services by the term "enhanced." Rather, these customers know of "data processing" services and "protocol conversion" services. As to the former, they are also probably aware that the BOCs do not offer very many of them -- although they may not know why.

²⁴⁸Certain "users committees" have been commentators before this Commission almost from the start on the CPNI issue. Furthermore, the reporting of the CPNI issues in the trade press and trade association publications has also been extensive. See, e.g., Phase II Recon. Order, 3 FCC Rcd. at 1163 ¶ 98. Thus, USWC would argue that many customers already knew of the Commission's CPNI rules before any BOC customer notification.

notifications might serve primarily to allow the educated consumer to have a return card by which to restrict CPNI use or to add other vendors to the list of authorized recipients of CPNI. Since a customer who wished to restrict their CPNI could reasonably be expected to do so on his/her/its own initiative -- even without a BOC return card -- it might well be that the primary function of these notifications is to appropriate BOCs' resources to accommodate the printing and mailing expenses of other enhanced services businesses.

b. The single-line business customer.

The customer in this market segment has not been much discussed by the Commission -- at least with regard to CPNI access and enhanced services.²⁵⁰ The USWC single-line business customer can be as sophisticated as any large business or as parochial as a residence subscriber. Some of our small business customers understand the concept of "enhanced services," due either to some familiarity with protocol conversion services, data processing services, voice messaging services or trade press reports. Some might even have gained or added to their understanding of such services from the notification USWC sent to

²⁵⁰The Commission has observed that these customers are knowledgeable about the competitive nature of the CPE market and that CPE options are available. See BOC CPE Relief Order, 2 FCC Rcd. at 153 ¶ 68; see also Phase II Order, 2 FCC Rcd. at 3094 ¶ 152.

them,²⁵¹ although there is no evidence to demonstrate this.²⁵²

Most probably, most of these customers do not care about the regulatory moniker placed on the services they wish to purchase.

These customers expect to hear from, and appreciate hearing from USWC, regarding new products and services.²⁵³ And, USWC considers that a part of our quality service commitment. However, USWC would venture a guess that these customers might not return a prior authorization card. They would, however, be irritated if USWC did not respond affirmatively and knowledgeably to a request for service, when and if they choose to place an order.

Thus, a number of corollary principles can be ascertained regarding this group:

²⁵¹As stated earlier, due to the cost of segregating the business customers, USWC has already sent notifications to all business customers, including single-line customers. See note 238, supra.

²⁵²There is no information available that would demonstrate the extent of the business customer's knowledge about enhanced services before or after receiving the USWC notification or whether that notification added anything to the customer's working or practical knowledge.

Anecdotaly, it seems that USWC has encountered more confusion from small business subscribers with regard to exercising their CPNI rights than the business community as a whole. For example, a number of subscribers who have restricted their CPNI in writing later demonstrate considerable confusion over the consequences of that restriction. See, e.g., Notice of Informal Complaint filed by Louise Aron, dated Sept. 11, 1990 (IC-90-05497), with regard to CPNI restrictions and the provision of voice mail service. Furthermore, these customers become annoyed when they cannot orally "unrestrict" so as to be able to place an order through a joint marketing representative.

²⁵³USWC has internal customer survey data that supports this conclusion.

- (1) They may or may not know or understand the Commission's legalistic differentiation between "enhanced" and "basic" services. However, they may well be, or have been, purchasers of such services.
- (2) These customers may or may not read a customer notification. If they are already educated about enhanced services, they may read it for additional information. If they are not, they may not spend the time because the information might not be material. However, they would not want to be dismissed when calling to order such a service.
- (3) If the small business was already fairly high up on the knowledge curve with regard to enhanced services, as are many large businesses, this customer could be expected to act in a fashion similar to large business customers. Knowledgeable about the regulatory regime surrounding enhanced services and desirous of alternative sources of supply, this customer might well return a prior authorization card.
- (4) If the small business customer was not so knowledgeable already, however, this customer would probably not return a prior authorization form -- either because they would not read it, would not understand the jargon, or would not see the immediate need.²⁵⁴ However, these same customers could be expected to be very irritated if they called up to order voice mail, for example,²⁵⁵ and could not order what they wanted then.
- (5) If the small business subscriber failed to return a mandated prior authorization card, a BOC could probably get an oral prior authorization from such a customer when that customer called in to place an order for service, but not without considerable expense being incurred as a result of the "on line" conversation. Such a conversation could reasonably be expected to involve a discussion of the difference between a "basic" and "enhanced" service and an explanation of why the customers' CPNI is currently restricted (e.g.,

²⁵⁴The failure to return such a form would affect not only the BOCs' use of CPNI but that of others, as well. Thus, no provider of enhanced services would benefit from this inaction or inertia.

²⁵⁵Or a facsimile store and forward service such as USWC was compelled to withdraw. See note 35 and text at 26-27, supra.